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ALEXANDER L. STEVAS,
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No. 82-1906

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

LACLEDE GAS COMPANY,
Petitioner,

v.

OFFICE OF THE PUBLIC COUNSEL OF THE STATE OF MISSOURI,
Respondent,

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI

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QUESTIONS PRESENTED

Whether the decision of the Public Service Commission of Missouri dated October 15, 1980, in "*In the matter of rate design of Laclede Gas Company,* Case No. GO-78-38" is lawful and reasonable under Missouri law; whether the limited hearing procedure adopted by the Public Service Commission:

a) is authorized by any Missouri statutory provision;

b) affords parties to the administrative proceedings the opportunity to exercise those procedural rights guaranteed by Missouri law;

c) provides the courts and the parties an adequate basis for determining the reasonableness of the Commission's decision;

whether the decision is based upon competent and substantial evidence as required by Missouri law.

PARTIES TO THE PROCEEDINGS

The parties to the proceeding in the Court below were James M. Fischer, Public Counsel for the State of Missouri, the Public Service Commission of Missouri, and Laclede Gas Company.

TABLE OF CONTENTS AND AUTHORITIES

Page

Questions Presented I

Parties to the Proceedings I

Table of Contents and Authorities III

Statement of the Case 1

Reasons for Denying the Writ

1. The Petitioner has not demonstrated that the State Court's decision turned upon a federal question that was actually passed upon and decided 8

2. Even if the State Court decided a federal question, this Court should not grant a Writ Of Certiorari since the lower Court decision rests on the following independent, nonfederal grounds:

   a) The limited hearing procedure used in this case was unauthorized by statute; and

   b) The Commission failed to decide the case based upon the competent and substantial evidence 10

3. The State Court's decision is not inconsistent with applicable decisions of this Court or other Federal Courts 11

4. The State Court's decision will not have a chilling effect on the parties' ability to settle and compromise their cases before the Commission ..14

Conclusion 18

CITATIONS

Cases:

Black v. Cutter Laboratories, 351 U.S. 292 (1956) 11

Bolling v. Lersner, 91 U.S. 594 (1876) 8

Broad River Power Co. v. State ex rel. Daniel, 281 U.S. 537, aff'd on rehearing, 282 U.S. 187 (1930) 11

Commercial Bank v. Rochester, 82 U.S. (15 Wall.) 639 (1873) 8

Consolidated Turnpike Co. v. Norfolk O.V.Ry., 228 U.S. 326 (1913) 9

Detroit City Ry. v. Guthard, 114 U.S. 133 (1885) 8

Frozen Foods Express, Inc. v. United States, 328 F.Supp. 666, 670 (N.D. Tex. 1971) 15

Independent Bankers Association v. Board of Governors, 516 F.2d 1206, 1220 (D.C. Cir. 1975) 13

Inexco Oil Co. v. Corporation Commission, 628 P.2d 362, 364 (Okla. 1981) 13

In Re Hugoton-Andarko Area Rate Case; the People of the State of California v. Federal Power Commission, 466 F.2d 974 (9th Cir. 1972) 12, 13

In Re Martigney Creek Sewer Co., Case No. SR-82-166 (Mo.P.S.C. March 4, 1983) 17

In Re Saline Sewer Co., Case No. SR-82-262 (Mo.P.S.C. December 22, 1983) 17

Live Oak Water Users' Association v. Railroad Commission, 269 U.S. 354 (1926) 10

Metropolitan Washington Board of Trade v. Public Service Commission, 432 A.2d 343, 361-63 (D.C.App. 1981) 12

Mobil Oil Corporation v. Federal Power Commission, 417 U.S. 283, 312-14 (1974) 12, 13

Pennsylvania Gas & Water Co. v. Federal Power Commission, 463 F.2d 1242 (D.C. Cir. 1972) 12

Placid Oil Co. v. Federal Power Commission, 483 F.2d 880, 893 (5th Cir. 1973) 12, 13

State ex rel. Fischer v. Public Service Commission, 645 S.W.2d 39 (Mo.App. 1982) 6, 10, 11, 14, 16

State ex rel. Utility Consumers Council of Missouri v. Public Service Commission, 585 S.W.2d 41, 49 (Mo. banc 1979) 15

Mo. Const. art I, § 10 9

Section 386.130, RSMo 1978 6

Section 386.410, RSMo 1978 .....6, 10

Section 386.420, RSMo 1978 .....6, 14

Section 386.710, RSMo 1978 2

Section 536.063(3), RSMo 1978 14

Section 536.070(2), RSMo 1978 14

Section 536.080, RSMo 1978 .....6, 14

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OFFICE OF THE PUBLIC COUNSEL OF THE STATE OF MISSOURI,
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BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI

Respondent Office of the Public Counsel of the State of Missouri (hereinafter "Respondent" or "Public Counsel") respectfully requests that this Court deny Petitioner's request for a writ of certiorari in this matter.

STATEMENT OF CASE

Petitioner's Statement Of Case does not contain a concise statement of the case containing all that is material to the consideration of the issues presented, as required by U.S. Sup. Ct. Rule 21.1(g). The Public Counsel, therefore, respectfully submits the following Statement Of Case for consideration by the Court.

On August 15, 1977, the Public Service Commission of the State of Missouri (hereinafter "Commission"), *sua sponte*, instituted "In the matter of the rate design of Laclede Gas Company, Case No. GO-78-38" to investigate the rate design of Laclede Gas Company (hereinafter "Company" or "Petitioner").

The Public Counsel participated throughout the proceeding in his capacity as the statutory representative of the public in any proceeding before the Commission. Section 386.710(1)(2), RSMo 1978.[1] Representatives of the Company and the Commission's General Counsel and technical staff also participated throughout the proceeding.

On May 25, 1978, the Commission granted the petitions for intervention of the following parties: City of St. Louis, Union Sarah Community Corporation, a community service corporation in the St. Louis metropolitan area representing low income consumers, and a group of industrial intervenors including General Motors Corporation, Monsanto Company, ACF Industries, Inc., Anheuser-Busch, Inc., McDonnell Douglas Corporation and Nooter Corporation (hereinafter "Industrial Intervenors").

Pursuant to various orders of the Commission, the Company, Public Counsel, Commission Staff and Industrial Intervenors filed their prepared testimony and exhibits with the Commission prior to the scheduling hearings.

On September 9, 1980, local hearings were held in St. Louis and Clayton, Missouri, for the purpose of considering the testimony of the general public in Case No. GO-78-38 heard on a consolidated record with Case No. GR-80-210, the Company's 1980 general rate case.

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[1]All statutory references are to RSMo 1978, as amended, unless otherwise indicated.

After the prehearing conference which began on September 15, 1980, some of the parties reached a compromise regarding the rate design issues involved in Case No. GO-78-38. On October 1, 1980, all parties, except the Public Counsel, executed and filed a Stipulation and Agreement with the Commission which contained joint recommendations of the signatory parties regarding the class revenue allocations and rate design for the Company. (Petitioner's Brief for Certiorari at Appendix D, A-19)

In the Stipulation and Agreement, the signatory parties proposed that the Commission approve the following annual revenue increases (decreases) for the various customer classes:

Customer Class	*Annual Revenue Increase (Decrease)*
General Service	$ 417,400
General Space Heating	(1,144,600)
Seasonal Service	15,800
Large Volume Service	402,200
Interruptible Service	137,700
General L.P. Gas Service	70,600
Unmetered Gas Light Service	46,200
Special Contracts	46,900
Sales for Resale	5,300

The signatory parties also included in the stipulation specific rates to recover the class revenue allocation. The rate structures proposed by the signatory parties for the general space heating and seasonal service customer classes were in the form of declining block rates. (*Id.* at A-24)

The Public Counsel did not join in the Stipulation and Agreement and at all times made it clear to all parties that he would not agree to a disposition of the case on the basis of the stipulation.

The Public Counsel appeared before the Commission on October 9-10, 1980, the time established for the hearing, prepared to present his affirmative case and recommendations and otherwise exercise his procedural rights secured by the Missouri Constitution, Chapters 386, 393 and 536, RSMo 1978, and 4 CSR 240-2.010 *et seq.* However, the Commission, over the objections of the Public Counsel, adopted a "limited hearing procedure" set forth in paragraphs 9 and 10 of the Stipulation and Agreement. (Petitioner's Brief for Certiorari at Appendix D, A-22)

Under the limited hearing procedure, the Commission ruled that the only issue to be considered in the hearing was whether the joint recommendation contained in the stipulation should be accepted or rejected; the hearing would not consider whether the Public Counsel's proposed rate design was in the public interest. If the Commission had rejected the joint recommendation contained in the Stipulation and Agreement, a subsequent hearing apparently would have been held to consider the Public Counsel's evidence and to afford the signatories to the Stipulation and Agreement the right to a full and contested hearing on the merits and issues arising in Case No. GO-78-38. Since the Commission accepted the terms of the Stipulation and Agreement after the limited hearing, no subsequent hearings were held. No hearing was held to consider the merits of the Public Counsel's proposed rate design or alternative rate designs.[2]

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[2]The Commission's Report and Order described the limited hearing procedure as follows:

> As a result of a further prehearing conference, five of the six active parties in the instant case executed a proposed Stipulation and Agreement. The Stipulation, filed October 1, 1980, was not executed by the Public Counsel. The parties executing the Stipulation proposed that an abbreviated or a partial hearing should be held to determine if the Stipulation should be

(Continued on next page)

Under the limited hearing procedure, the Commission permitted the Public Counsel to cross-examine opposing witnesses concerning their prepared testimonies and the terms of the stipulation. The Public Counsel was also permitted to present his expert witness who prepared and filed testimony and exhibits. However, since the Commission had ruled that the only issue before it was whether the joint recommendation contained in the Stipulation and Agreement should be accepted or rejected, the signatory parties waived cross-examination of the Public Counsel's witness, but reserved the right to recall the witness for the purpose of cross-examination if the Commission rejected the terms of the Stipulation and Agreement.[3]

On October 14, 1980, the Commission held oral arguments in the matter. After the oral arguments concluded, a brief recess was taken by the Commission. When the proceeding commenced, the hearing examiner announced on the record that the Commission had voted (5-0) to dispose

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Footnote continued

> accepted or rejected, and if rejected, the hearing would go forward to a conclusion. (Petitioner's Brief for Certiorari at Appendix D, A-13–A-14)

The concurring opinion of Commissioner Slavin also described the limited hearing procedure:

> Public Counsel opposed the stipulation and requested an opportunity to go forward to present his evidence to the Commission. The Commission agreed to hear this evidence as well as testimony which attacked the stipulation. However, the Commission did not have the authority to accept the case of the Public Counsel under this limited proceeding–only the right to accept or reject the stipulation and then go to full hearing on the matter. (Petitioner's Brief for Certiorari at Appendix D, A-17–A-18)

[3]Counsel for Union Sarah Community Corporation asked the Public Counsel's witness approximately twelve questions before reserving the right to recall the witness, if the Commission rejected the terms of the Stipulation and Agreement.

of the matter under the terms proposed in the Stipulation and Agreement.

On October 15, 1980, the Commission issued its Report and Order adopting the class revenue allocations and rate designs proposed in the Stipulation and Agreement. The Commission ordered the Company to file revised tariffs designed to implement the rate schedules contained in the Stipulation and Agreement for gas bills based on meter readings on and after the effective date of the order (i.e., November 15, 1980). The Report and Order did not contain a certification of compliance with Sections 386.130 and 536.080(2). On October 23, 1980, transcripts of the proceedings were filed with the Secretary of the Commission and served upon the parties.

On December 17, 1980, the Company submitted new tariff sheets containing the rates adopted by the Commission in its Report and Order. On December 22, 1980, the Commission issued its Order Approving Tariff Sheets which approved the revised rates.

The Circuit Court of Cole County upheld the validity of the order. On appeal, however, the Missouri Court of Appeals, Western District, held that the limited hearing procedure used by the Commission was not authorized by Missouri law. *State ex rel. Fischer* v. *Public Service Commission et al.*, 645 S.W.2d 39 (Mo.App. 1982) The court specifically rejected the arguments of the Commission that Section 386.410 supported the limited hearing procedure. *Id.* at 42. The court also found that the Commission's order did not meet the statutory requirement of Section 386.420 to include findings of fact in all written reports. *Id.* at 42. Finally, the court discussed the requirements of due process, stating:

> Due process requires that administrative hearings be fair and consistent with rudimentary elements of

fair play. *Tonkin* v. *Jackson County Merit System Commission*, 599 S.W.2d 25, 32-33[7] (Mo.App. 1980) and *Jones* v. *State Department of Public Health and Welfare*, 354 S.W.2d 37, 39-40[2] (Mo.App. 1962). One component of this due process requirement is that parties be afforded a full and fair hearing at a meaningful time and in a meaningful manner. *Merry Heart Nursing and Convalescent Home, Inc.* v. *Dougherty*, 131 N.J.Super. 412, 330 A.2d 370, 373-374[7] (1974).

The hearing procedure followed in this case failed to satisfy the due process requirement. Although Public Counsel was allowed to present his rate design proposal and to cross-examine the opposing witnesses, the Commission had previously decided that the only issue it would consider was whether or not to approve the stipulation and agreement. In light of this decision, the hearing afforded Public Counsel was not meaningful, in that the Commission was precluded from approving anything but the stipulated rate design in the course of the hearing in question. The question properly before the Commission was what rate design to adopt, rather than whether or not to adopt one particular proposal. Thus, the hearing procedure adopted in this case was a violation of the due process which should be accorded to Public Counsel in his capacity as the representative of the public. *Id.* at 43.

On February 23, 1983, the Supreme Court of Missouri entered its order denying Petitioner's application to review the decision of the Missouri Court of Appeals.

REASONS FOR DENYING THE WRIT

1. The Petitioner has not demonstrated that the state court's decision turned upon a federal question that was actually passed upon and decided.

It is a settled rule of law that the Petitioner must demonstrate that the state court actually decided the federal question presented before this Court has jurisdiction to review the matter. *Commercial Bank* v. *Rochester*, 82 U.S. (15 Wall.) 639 (1873); *Detroit City Ry.* v. *Guthard*, 114 U.S. 133 (1885); *Bolling* v. *Lersner*, 91 U.S. 594 (1876).

It is not clear in the case at hand that the state court was presented with a federal question. Contrary to the assertion on page 4 of its Petitioner's Brief for Certiorari, the Public Counsel did not expressly argue before the Missouri Court of Appeals that the procedures utilized by the Commission violated the due process clause of the Fourteenth Amendment to the United States Constitution. Although the Public Counsel's Brief before the Missouri Court of Appeals cited several cases applying the due process clause of the Fourteenth Amendment to the United States Constitution, the Public Counsel's Brief at page 58 specifically stated:

> These decisions are not cited in an effort to argue that the procedural rights of parties to Commission proceedings are constitutionally mandated. Rather, they are merely presented as an illustration of the importance which courts have attached to the protection of procedural rights in administrative proceedings. Since the legislature has expressed many of the same concerns through the enactment of various procedural laws, an awareness of the considerations underlying these constitutional developments can be useful in ascertaining the intended scope and effect of those legislative initiatives in the same area.

> In the Administrative Procedures and Review Act, Section 536 et seq., the Missouri legislature has set out in elaborate detail the procedural formalities and rights that must be observed in those instances where an administrative hearing is required by statute. What must be determined here, therefore, is whether the procedural rights afforded by the limited hearing approach are an adequate substitute for those procedural hearing rights specifically guaranteed by the Act. For "the cardinal test of the presence or absence of due process of law in an administrative proceeding is the presence or absence of rudiments of fair play long known to the law, *and whether a person has been denied due process of law by the action of an administrative body depends on whether it acted contrary to the statutes and rules* and with arbitrary discrimination." 16A C.J.S. Constitutional Law § 628 p. 851 (citations omitted) (emphasis added).

Nor is it clear from the opinion of the Missouri Court of Appeals that its decision was based upon the due process clause of the Fourteenth Amendment of the United States Constitution. As noted in Petitioner's Brief for Certiorari at 5, n.1, the court did not explicitly state that its decision was based upon the federal constitution rather than Article I, Section 10 of the Missouri Constitution.[4]

In *Consolidated Turnpike Co.* v. *Norfolk & O.V.Ry.*, 228 U.S. 326 (1913), it was held that an asserted right to just compensation for improvements in eminent domain proceedings did not necessarily present a federal question under the due process clause of the Fourteenth Amendment where due process of law was guaranteed by the state con-

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[4]Article I, Section 10 of the Missouri Constitution states:

> That no person shall be deprived of life, liberty or property without due process of law.

stitution and the case might well have been litigated wholly upon local law. *See also Live Oak Water Users' Association* v. *Railroad Commission*, 269 U.S. 354 (1926).

Since the Petitioner has not clearly demonstrated that a federal question actually arose, and was passed upon and decided by the Missouri Court of Appeals or the Missouri Supreme Court, this Court should decline to issue the requested writ.

2. Even if the Missouri Court of Appeals decided a federal question, this Court should not grant a writ of certiorari since the lower court decision clearly rests upon independent, nonfederal grounds.

In addition to addressing the due process issue, the Missouri Court of Appeals issued two holdings which constitute independent, nonfederal grounds for its order reversing and remanding this case for additional proceedings before the Commission. First, the court held that "the limited hearing procedure used in this case was unauthorized." 645 S.W.2d at 44. The court specifically rejected the Commission's position that Section 386.410 gives it unlimited discretion to conduct its hearings in any possible manner. Instead, the court found that Section 386.410 gives the Commission flexibility in its proceedings, provided that the Commission first satisfied all other statutory requirements. *Id.* at 42.

Secondly, the court found that the Commission, rather than performing its statutory duty to fix gas rates based upon findings of fact supported by competent and substantial evidence simply adopted the stipulation agreement, thus violating Section 386.420 and rendering its subsequent order invalid. *Id.* at 43. Specifically, the court noted that "the adoption of declining block rates for general space heating and seasonal service classes also seems to have been made without evidentiary support. . ." *Id.* The court

also seemed to question the evidentiary basis and findings of fact concerning the Commission's decision to increase the class revenue requirement for the general service class by $417,000 and decrease the class revenue requirement for the general space heating class by $1,144,600. *Id.* Either nonfederal ground—lack of statutory authority for the limited hearing procedure, or failure to decide the case based upon the competent and substantial evidence in the whole record—is sufficient in itself to sustain the judgment of the Missouri Court of Appeals and the February 23, 1983, order of the Missouri Supreme Court denying Petitioner's application for transfer of this case.

This Court should not pass on federal questions discussed in a state court opinion where it appears that the judgment embodied in the opinion rests on adequate state grounds. *Black* v. *Cutter Laboratories*, 351 U.S. 292 (1956); *Broad River Power Company* v. *State ex rel. Daniel*, 281 U.S. 537, *affirmed* 282 U.S. 187 (1930).

Since the record in this case clearly demonstrates that the state court decision was rendered upon independent, nonfederal grounds which were sufficient to sustain it, this Court should not grant Petitioner's request for a writ of certiorari.

3. The decision below is not inconsistent with applicable decisions of this Court or other federal courts.

Petitioner cites a number of federal cases which have addressed the authority of administrative agencies to adopt non-unanimous stipulation and agreements and asserts that the decision below is in direct conflict with them. (Petitioner's Brief for Certiorari at 7-10) This contention is patently fallacious. The cited federal cases support the holding of the Missouri Court of Appeals that the Commission unlawfully relied on the non-unanimous stipulation and agreement approved by it in this case.

Under the procedures upheld in *Mobil Oil Corporation* v. *Federal Power Commission*, 417 U.S. 283, 312-14 (1974), *Placid Oil Co.* v. *Federal Power Commission*, 483 F.2d 893 (5th Cir. 1973), *In Re Hugoton-Andarko Area Rate Case; the People of the State of California* v. *Federal Power Commission*, 466 F.2d 974 (9th Cir. 1972), *Pennsylvania Gas & Water Co.* v. *Federal Power Commission*, 463 F.2d 1242 (D.C. Cir. 1972), and *Metropolitan Washington Board of Trade* v. *Public Service Commission*, 432 A.2d 343, 361-63 (D.C. App. 1981), the administrative agencies considered the evidence and positions of the non-signatory parties as well as the joint recommendations contained in the stipulation. Unlike the limited hearing procedure held unlawful in this case, the administrative agencies in the cases cited by Petitioner were not forced to accept or reject the terms of the stipulation before the regulatory agencies could consider the evidence and positions of the non-signatory parties. The administrative agencies would not have been precluded from adopting the non-signatory parties' position, provided it was supported by substantial evidence.

Where reliance on non-unanimous settlement agreements have been sanctioned, the courts have generally emphasized the fact that the administrative body had detailed the factual basis and policy considerations underlying its reasons for adopting the agreement and rejecting alternative positions. Thus, in upholding the FPC's adoption of a non-unanimous settlement agreement, this Court stated in *Mobil Oil Corporation* v. *Federal Power Commission*, *supra* at 312-14:

> The Commission clearly had the power to admit the agreement into the record—indeed, it was obligated to consider it. That it was admitted for the record did not, of course, establish without more the justness and reasonableness of its terms. But the Com-

mission did not treat it as such. As we have noted, the Commision weighed its terms by reference to the entire record in the Southern Louisiana area proceeding since 1961, and further supplemented that record with extensive testimony and exhibits directed at the proposal's terms. We think that the Court of Appeals correctly analyzed the situation and stated the correct legal principles:

> "No one seriously doubts the power—indeed, the duty—of FPC to consider the terms of a proposed settlement which fails to receive unanimous support as a decision on the merits. We agree with the D.C. Circuit that even "assuming that under the Commission's rules [a party's] rejection of the settlement rendered the proposal ineffective *as a settlement,* it could not, and we believe should not, have precluded the Commission from considering the proposal *on its merits.' Michigan Consolidated Gas Co.* v. *FPC,* 1960, 108 US App DC 409, 283 F2d 204, 222 . . . ." (footnotes omitted)

See also Placid Oil Co. v. *Federal Power Commission, supra* at 893; *In Re Hugoton-Andarko Area Rate Case; the People of the State of California* v. *Federal Power Commission, supra* at 980; *Independent Bankers Association* v. *Board of Governors,* 516 F.2d 1206, 1220 (D.C. Cir. 1975); *Inexco Oil Company* v. *Corporation Commission,* 628 P.2d 362, 364 (Okla. 1981).

It is difficult to ascertain how the Commission decision in this case can be said to have conformed to the standard described above. As the Missouri Court of Appeals opinion noted, the Commission's findings were completely conclusory, and did not provide any insights whatsoever into if and how controlling issues were resolved. 645 S.W.2d at 42. In addition, the court found little, if any, evidentiary

support for several portions of the Commission's decision. *Id.*

In summary, the decisions cited by the Petitioner have held that even though an administrative decision incorporates a non-unanimous settlement agreement, the decision must still be based on substantial evidence. The procedure must not be designed to preclude the consideration and adoption of the non-signatory party's position, if it is supported by competent and substantial evidence. As the Missouri Court of Appeals noted in its opinion:

> The question properly before the Commission was what rate design to adopt, rather than whether or not to adopt one particular proposal. Thus, the hearing procedure adopted in this case was a violation of due process which should be accorded to Public Counsel in his capacity as the representative of the public. 645 S.W.2d at 43.

The above due process rights, among others, are expressly guaranteed by statute, *See* Sections 386.420(1), 536.063(3), 536.070(2), 536.080, and the Missouri Court of Appeals was entirely correct in holding that they were violated by the limited hearing procedure adopted in this case.

Since the decision of the Missouri Court of Appeals is not inconsistent or in conflict with applicable decisions of this Court or other federal courts, Petitioner's request for a writ of certiorari should be denied.

4. The decision of the Missouri Court of Appeals will not have a chilling effect on the parties' ability to settle and compromise their cases before the Commission.

Petitioner is apparently concerned that the Missouri Court of Appeals' decision will have an adverse effect on the Commission's ability to perform expeditiously its regulatory role. As reflected in the lower court's opinion,

however, considerations of convenience and expediency do not determine whether an act of the Commission is authorized by statute. 645 S.W.2d at 43. *See also State ex rel. Utility Consumers Council of Missouri* v. *Public Service Commission*, 585 S.W.2d 41, 49 (Mo. banc 1979). Although the limited hearing procedure may be convenient, its use by the Commission is nevertheless inconsistent with that regulatory body's statutory duty to establish reasonable rates based on an exacting and equitable consideration of all relevant factors and policy concerns.

Statutory requirements that the Commission's decision be based on substantial evidence and that it make findings of fact and master the record, are all designed to ensure that such a process is followed when new rates are established. Moreover, the responsibility of making such determinations rests exclusively with the Commission and may not be abdicated or delegated for the sake of convenience or expediency. As the court stated in *Frozen Foods Express, Inc.* v. *United States*, 328 F.Supp. 666, 670 (N.D. Tex. 1971):

> [A]n application before the ICC is unlike pleadings and motions tendered in a lawsuit. Courts will normally accept the stipulations and restrictions under which the parties agree to try a case. A court's function, under the adversary system, is to resolve the dispute as it is presented by the parties. The court will not superimpose the interests of a third party upon the litigants unless, in those rare instances, their interests run afoul of what is called 'public policy.'
>
> The ICC on the other hand, is required to represent the public, a third party, when it grants or denies certificates of public convenience and necessity. In this capacity it cannot defer to the parties and permit them to define the metes and bounds of the controversy.

In this case, the Commission was apparently content to abdicate its responsibility to determine just and reasonable rates and instead permit some of the parties to assume its role as arbiter of the public interest. Since a majority of the parties had reached an agreement, the Commission was also content to ignore the overwhelming weight of the evidence and adopt recommendations which were not based upon competent and substantial evidence.

As noted by the Missouri Court of Appeals, Commissioner Slavin's concurring opinion explained the decision on the ground that "the stipulated rates can go into effect almost immediately, whereas if the Commission goes to full hearing to determine the merits of the case on full evidence, a decision which would take effect in this heating season is almost impossible." (Petitioner's Brief for Certiorari, Appendix D at A-18) Such considerations do not justify departure from the regulatory framework established by the legislature. 645 S.W.2d at 43.

The concurring opinion of Commissioner Slavin recognized that the stipulation was contrary to recent Commission decisions and the evidence in the record:

> Although the stipulation goes counter to some of the decisions reached in the area of rate design by the Commission in other gas rate design cases, it does offer some immediate relief to the space heating customers of Laclede Gas. Although the stipulation does consolidate schedules and divisions, it imposes an increase on general service customers which cannot be supported other than through this compromise. It leaves in place a declining block structure although modified, which is designed to protect the largest residential users of gas when more appropriate measures to protect these users might have been considered. These features represent the compromise of

the parties involved. (Petitioner's Brief for Certiorari, Appendix D at A-18.)

The Commission's failure to make findings of fact or read the transcripts is an additional indication of the extent to which it discarded its responsibility to determine rates on the basis of the evidence.

Aside from ignoring these legal considerations, Petitioner's contention regarding the potential effect of the Missouri Court of Appeals' decision is based on the erroneous premise that the decision will eliminate the use of non-unanimous stipulations and agreements in Commission proceedings. However, since the Missouri Court of Appeals' decision was issued on November 9, 1982, there have been cases before the Commission in which a non-unanimous stipulation agreement was entered into and submitted to the Commission in the context of a full hearing.[5] Substantial confusion has not been created by the Missouri Court of Appeals' decision. Instead the decision has significantly clarified the procedures to be used whenever all parties do not join in a stipulation and agreement.

[5]In both *In Re Saline Sewer Company*, Case No. SR-82-262 (Mo. P.S.C. December 22, 1983) and *In Re Martigney Creek Sewer Company*, Case No. SR-83-166, (Mo. P.S.C. March 4, 1983) the utility and Staff of the Missouri Public Service Commission entered into a non-unanimous stipulation and agreement. Although Public Counsel opposed the terms of the stipulation and agreement in both instances and only one hearing was held to determine the merits of the case, the utility and Staff did not hesitate to enter into the non-unanimous agreements.

CONCLUSION

For each of the foregoing reasons, the Office of the Public Counsel of the State of Missouri respectfully requests that the Court deny the Petitioner's request for a writ of certiorari to review the judgment and opinion of the lower court in this matter.

Respectfully submitted,

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